

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

MARTY LANE DUE, #26673-034,
Petitioner,

v.

DAN JOSLIN,
Respondent.

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3:05-CV-0853-P

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to the provisions of 28 U.S.C. § 636(b), and an order of the court in implementation thereof, this case has been referred to the United States Magistrate Judge. The findings, conclusions and recommendation of the Magistrate Judge are as follows:

FINDINGS AND CONCLUSIONS:

Type of Case: This is a petition for a writ of habeas corpus brought by a federal prisoner pursuant to 28 U.S.C. § 2241.

Parties: At the time of filing this habeas action, Petitioner was confined at FCI Seagoville in Seagoville, Texas. He was recently released from the custody of the Bureau of Prisons (BOP) and is residing in New Orleans, Louisiana. (Declaration of Darrin C. Scott at 1-2). Respondent is the warden of FCI Seagoville.

Findings and Conclusions: Whether a case is moot is a jurisdictional matter, since it implicates the Article III requirement that there be a live case or controversy. This court is obliged to raise the subject of mootness *sua sponte*. Bailey v. Southerland, 821 F.2d 277, 278 (5th Cir. 1987); Donovan v. Air Transport District Lodge No. 146, 754 F.2d 621, 624 (5th Cir. 1985).

The gravamen of Due's petition is that he was being denied pre-trial release placement in

a community corrections center pursuant to a BOP policy adopted in 2002 which permitted such pre-release placement for no more than the final ten percent of a prisoner's term of imprisonment. However, as related in the declaration of Mr. Scott, Due was transferred to a community corrections center in New Orleans, Louisiana on July 29, 2005, thereby rendering moot the relief sought in his petition. See Bailey, 821 F.2d at 278-79. Dismissal of this petition as moot is therefore appropriate. See McRae v. Hogan, 576 F.2d 615, 616-17 (5th Cir.1978).

RECOMMENDATION:

For the foregoing reasons it is recommended that the District Court dismiss the habeas corpus petition as moot.

A copy of this recommendation will be mailed to Petitioner Marty Lane Due, 308 Dauphine Street, New Orleans, LA 70130, his most recent known address.

Signed this 8th day of September, 2005.


WM. F. SANDERSON, JR.
UNITED STATES MAGISTRATE JUDGE

NOTICE

In the event that you wish to object to this recommendation, you are hereby notified that you must file your written objections within ten days after being served with a copy of this recommendation. Pursuant to Douglass v. United Servs. Auto Ass'n, 79 F.3d 1415 (5th Cir. 1996) (*en banc*), a party's failure to file written objections to these proposed findings of fact and conclusions of law within such ten-day period may bar a *de novo* determination by the district judge of any finding of fact or conclusion of law and shall bar such party, except upon grounds of plain error, from attacking on appeal the unobjected to proposed findings of fact and conclusions of law accepted by the district court.